

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-18 are pending in this application. By this Amendment, claims 3, 4, and 9-11 are amended, and claim 18 is added. No new matter is added. Claim 1 is the sole independent claim.

Applicant respectfully notes that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicant respectfully requests that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicant also respectfully notes that the present action does not indicate that the drawings have been accepted by the Examiner. Applicant respectfully requests that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that Applicant may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Information Disclosure Statement**

Applicant appreciates the Examiner's indication that the Information Disclosure Statement filed on September 21, 2004, has been considered.

In regards to the German reference no. 1658736, Applicant has provided the proper German document. Applicant notes that both documents have the same publication number, although it is noted that the submitted prior art document filed in the Information Disclosure Statement on September 21, 2004 is a published patent

application and the enclosed and intended prior art document is a so-called "gebrauchsmuster" (a kind of a technical model, specific to German intellectual property law). According, Applicant requests the Examiner to reconsider and initial the PTO-1449 pertaining to the German document in the next response.

### **Election/Restriction Requirement**

Applicant acknowledges the election of species III, of which claims 1-6 and 8-16 read on, and claim 7 has been withdrawn by the Examiner as being directed to a non-elected invention. Applicant respectfully submits that at least claim 1 is generic, and thus, request *rejoinder* of non-elected claim, *viz.* claim 7 if the elected claims are allowed. (See MPEP §821.04)

Applicant respectfully reserves the right to file a divisional application(s) as directed to the non-elected invention.

### **Objection to the Specification**

The disclosure is objected to under 37 C.F.R. 1.74 because reference character 35 is used to denote both a "pin" and a "plate."

Applicant has amended the instant specification, particularly on page 10, lines 18-23, to obviate the objection.

Reconsideration and withdrawal of the objection to the specification are respectfully requested.

### **Claim Rejections - 35 U.S.C. § 112**

Claims 1-6 and 8-17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In particular, in the outstanding Office Action, the Examiner asserts:

a) in claim 1, line 14, the term “the support surfaces” lacks antecedent basis. Applicant submits that the “support surfaces” in line 14 refers back to “a support surface at each of the plurality of recesses,” as recited in lines 12 and 13 of claim 1. Therefore, proper antecedent basis is provided.

In regard to the phrase “the support surfaces are all offset in the same direction relative to the recesses,” it is submitted that due to the shape of the support surfaces (i.e., L-shaped), a recess is formed in an L-shaped profile, which provides “an offset in the same direction relative to the recesses.” *See paragraphs [0066], [0070] and [0071] of the corresponding published application and FIGS. 4-7 and 9.*

b) in regard to claim 3, Applicant has amended claim 3 to recite “the flat plate” to obviate the rejection.

c) in regard to claim 8, Applicant submits that the support may be connected to a profile by means of for example welding (*see, e.g., paragraph [0066]*).

d) in regard to claims 9-11, Applicant has amended claims 9-11 to provide proper antecedent basis.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph, are respectfully requested.

### **Claim Rejections - 35 U.S.C. § 102**

Claims 1-6, 8-13 and 17 are rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 2,747,748 (“Barefoot”). Applicant respectfully traverses this rejection for the reasons discussed below.

Applicant respectfully submits that the Barefoot reference fails to disclose or suggest each and every element of claim 1, and therefore, an anticipatory rejection has not been established.<sup>1</sup>

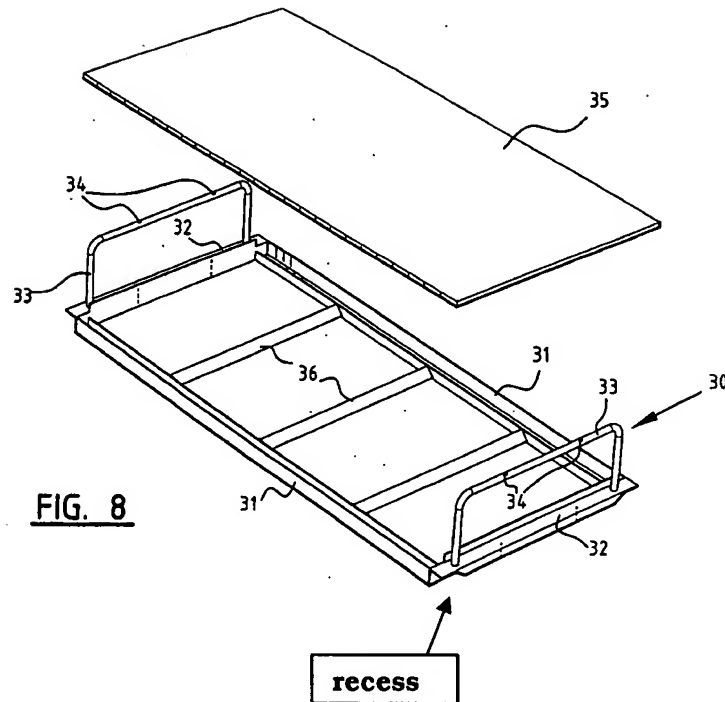
For example, claim 1 recites, *inter alia*:

under each of the supports, a recess is arranged in the carrier for receiving a support of an underlying carrier, whereby the carrier is also nestable during return transport or storing empty carriers with less space taken up by the carriers than in the stack.

In particular, Applicant respectfully submits that the Barefoot reference fails to disclose or suggest “a recess arranged in the carrier” under each of the supports. For example, FIG. 6 illustrates a construction of an L-shaped profile 19 and supports 20 and 22 connected thereto, whereby a recess may be made in the L-shaped profile for placing the carrying bracket 24. The carrying bracket 24 may protrude relative to the L-shaped profile so as to rest on the bracket 20 of the other end of a corresponding carrier. FIG. 7, made in similar manner, illustrates the other L-shaped profile having two recesses in which the carrying bracket 25 may be received and mounted fixedly on the relevant L-shaped profile. The carrying brackets may serve to support on the brackets placed thereunder. In this regard, FIG. 8 is reproduced below to illustrate the “recess arranged in the carrier.”

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<sup>1</sup> A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP §2131; Verdegaal Bros. v. Union Oil Co. of Ca., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).



Accordingly, the Barefoot reference fails to disclose or suggest, *inter alia*, “a recess is arranged in the carrier for receiving a support of an underline carrier,” as recited in claim 1.

Moreover, because the Barefoot reference fails to disclose or suggest the “recess,” it cannot teach or suggest “the support surfaces are all offset in the same direction relative to the recesses,” as recited in claim 1. Therefore, contrary to the Examiner’s contention, the Barefoot reference does not disclose or suggest each and every element of claim 1.

Further, one of ordinary skill in the art would not have attempted to modify the Barefoot reference to arrive at the claimed invention. For instance, example embodiments of the present invention disclose the carriers to be either stacked or nested, depending on how a superposed carrier is oriented when place upon an underlying carrier. Precisely for this reason, the features as taught in claim 1 are

presented of how the recessed and the support surfaces are arranged in an offset manner relative to one another.

For instance, FIG. 4 illustrates the carriers being stacked and the FIG. 5 illustrates the carriers being nested. When altering the relative positioning of the carriers one on top of the other, a superposed carrier will rest with the support surfaces thereof on the supports of an underlying carrier, thus creating a larger intermediate "space" for arranging growing material, e.g., plants, in the thus created intermediate space. By using the relative positioning as shown in FIG. 5 (and FIG. 9), the intermediate space between nested carriers is diminished to practically zero, which saves space for transport and storage, without actually having to adapt the configuration of the carriers themselves, for example, without having to remove or fold down and of the supports, or any other adaption to the configuration (as taught in prior art). It is submitted that only the orientation of the carriers relative to one another (or the positioning) needs to be adapted to achieve either a nested position as shown in FIG. 5 (and FIG. 9) of stacked position with sufficient intermediate space to arrange the growing material therein.

Since the Barefoot reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(b) and, thus, is allowable. Claims 2-6, 8-13 and 17 depend from claim 1, and therefore, allowable for the similar reasons discussed above with respect to claim 1.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 102(b) rejection of claims 1-6, 8-13 and 17.

**Claim Rejections - 35 U.S.C. § 103**

Claims 12-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Barefoot in view of U.S. Patent No. 2,803,369 ("Fleetwood"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 12-16 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Fleetwood reference fails to provide the teachings noted above from the Barefoot reference. Since claims 12-16 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 12-16 under 35 U.S.C. § 103(a) be withdrawn.

**New Claim**

New claim 18 has been added in an effort to provide further, different protection of Applicant's invention. New claim 18 is allowable at least for the reasons somewhat similar to those given to claim 1, and/or for their further features recited therein. In particular, Applicant submits that the Barefoot reference fails to disclose or suggest "the supports are fixed relative to the flat plate." The Barefoot reference, on the other hand, discloses the supports 13 being folded down to diminish the intermediate space between the nested carriers, which is precisely the problem being solved by Applicant's invention.

In view of the above, Applicant respectfully submits that claim 18 is in condition for allowance.

**CONCLUSION**

In view of the above remarks and amendments, Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is

respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicant does not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachments: German Reference No. 1658736  
PTO 1449